

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

JOAN P. STROUT, ET AL.,)	
)	
Plaintiffs)	
)	
v.)	Civil No. 97-58-B
)	
CURRIER LEASING CORPORATION,)	
ET AL.,)	
)	
Defendants)	

***ORDER GRANTING IN PART PLAINTIFFS' MOTION FOR
ATTACHMENT AND ATTACHMENT ON TRUSTEE PROCESS***

This personal injury action arises out of a motor vehicle accident involving the plaintiffs' automobile and a truck owned and/or operated by the defendants' in which the plaintiff sustained severe injuries. Plaintiff Joan Strout, now a paraplegic, expects to recover damages between \$5 million and \$6 million. Because the defendants have only \$2 million in liability insurance coverage available to satisfy a possible future judgment, the plaintiffs have moved for an attachment and an attachment on trustee process in the amount of \$3 million. A hearing on the motion was conducted by the Court on July 23, 1997. After considering the arguments presented at that time by the parties, as well as the briefs and evidence submitted by the parties concerning the issue, the Court concludes that, although it is more likely than not that the plaintiffs will recover a judgment in an amount at least equal to or even somewhat more than the defendants' insurance policy, it is not more likely than not that such a judgment will approximate at least \$5 million.

Pursuant to Local Rule 64, Maine law governs attachment and attachment on trustee process proceedings in the federal courts of this District. D. Me. Local R. 64. Maine Rules of Civil Procedure 4A(c), 4B(c), authorize the Court to order an attachment and an attachment on trustee

process to secure a judgment when it is shown that it is more likely than not that the plaintiffs will recover a judgment against the defendants in an amount equal to or greater than the aggregate sum of the attachment and any liability insurance. Me. R. Civ. P. 4A(c), 4B(c). The plaintiffs must support their motion with affidavits setting forth "specific facts sufficient to warrant the required findings." Me. R. Civ. P. 4A(i). In view of the \$2 million insurance policy covering the defendants which the parties agree exists in this case, the plaintiffs seek an attachment in the amount of \$3 million. The question thus becomes whether the affidavits and the supporting materials demonstrate that the plaintiffs will recover a judgment of at least \$5 million.

In support of their motion for an attachment and an attachment on trustee process, the plaintiffs submitted affidavits of Joan P. Strout, one of the plaintiffs, Wakine G. Tanous, Esq., Peter DeTroy, III, Esq., and a copy of the police traffic accident report. In their response to the plaintiffs' motion, the defendants submitted affidavits of Arthur Bowie, the driver of the truck involved in the accident, George Nelson, a witness to the accident, Murray D. Segal, an accident reconstructionist, Rebecca J. Willigar, a registered nurse and rehabilitation consultant, Kevin M. Cuddy, Esq., and Frederick J. Badger, Jr., Esq. In their reply to the defendants' response, the plaintiffs submitted another affidavit of Joan Strout, as well as affidavits of Maine State Trooper Trevor Snow, who investigated the accident scene, and Richard Leavitt, a Millinocket police officer present at the accident scene on the date in question.

Based on its review of the above materials, and after considering the parties' arguments, the Court concludes that it is more likely than not that the plaintiffs will recover a judgment in this matter exceeding the \$2 million insurance policy limit. In reaching its decision, the Court especially was impressed by the facts of the case as presented by both parties, the Strout affidavit, the lack of

evidence concerning a sudden stop on the part of Mrs. Strout, the failure by Attorney Cuddy in his affidavit to dispute or address the alleged negligence on the part of Mr. Bowie, the plaintiffs' argument that it was incumbent on the part of Mr. Bowie to drive at a prudent distance behind Mrs. Strout's automobile, and the evidence presented by both parties regarding the future medical expenses likely to be incurred by Mrs. Strout. It is noteworthy that the figures used by the defendants' own witness on this final issue, Ms. Willigar, themselves approach a high total figure, even perhaps as much as \$1.7 million. In addition to future medical expenses, a jury also will be asked to assess, in the event that the plaintiffs' succeed in establishing negligence on the part of the defendants' to a degree allowing them to recover any damages, the plaintiffs' other claims to damages including, but not limited to, their actual physical injuries, pain and suffering, mental and emotional distress, loss of enjoyment of life, lost wages and earning capacity, and loss of consortium.

Despite its finding that the plaintiffs are likely to recover in excess of the \$2 million insurance policy limit, the Court is unable to conclude that the eventual judgment in this matter likely will be greater than \$5 million. The Court instead finds that a judgment approximating total damages of \$3 million likely will result. Thus, after deducting the \$2 million insurance policy from such a likely award, the Court is willing to grant the plaintiffs' motion in part, approving only an attachment and an attachment on trustee process in the amount of \$1 million.

Conclusion

For the foregoing reasons, the plaintiffs' motion for an attachment and an attachment on trustee process hereby is **GRANTED** in the amount of \$1,000,000.00 (one million dollars).

SO ORDERED.

Eugene W. Beaulieu
U.S. Magistrate Judge

Dated this 25th day of July, 1997.